

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-46845-2022

Date of decision : 13.02.2023

Amandeep Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Vikas Gupta, Advocate
for the petitioner.

Mr.Ferry Sofat, Addl.A.G. Punjab.

VIKAS BAHL, J.(ORAL)

This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.105 dated 05.10.2021 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) at Police Station Chohla Sahib, District Tarn Taran.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 07.10.2021 and the investigation is complete and the challan has already been presented and there are 13 witnesses, out of which, one witness has been examined and thus, the trial is likely to take time. It is further submitted that earlier bail application of the petitioner was dismissed as withdrawn at that stage on 24.11.2021 and even thereafter much progress has not been done in the trial. It is stated that the

the case of the prosecution, recovery of 260 grams of heroin was effected from co-accused Palwinder Kaur and it is the said Palwinder Kaur, who had named the present petitioner in her disclosure statement, on the basis of which the present petitioner has been implicated in the present case. It is submitted that as per the prosecution case, recovery of 10 grams of heroin has been effected from the present petitioner which recovery, if seen in isolation, would be much less than the stipulated commercial quantity of heroin as the same starts from 250 grams. It is further submitted that there is no other tangible evidence other than the disclosure statement of co-accused Palwinder Kaur so as to connect the petitioner to the alleged recovery of 260 grams of heroin and the present petitioner has been implicated in the case only on the pretext of being the sister of Palwinder Kaur. It is stated that in such a situation, the petitioner cannot be held liable for the recovery effected from Palwinder Kaur and at best, could be held liable for the recovery of 10 grams of heroin (non-commercial quantity), which as per the case of prosecution, has been effected from the present petitioner. In support of his arguments, learned counsel for the petitioner has relied upon order dated 30.11.2022 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.4729/2022 titled as Abu Taher Mandal @ Sentu Vs. The State of West Bengal as well as order dated 14.09.2022 passed by a Coordinate Bench of this Court in CRM-M-4814-2022 titled as Kali Kaur Vs. State of Punjab.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that the recovery effected in the present case, if taken as an aggregate, would fall within the ambit of commercial quantity and thus, Section 37 of

the NDPS Act 1985 would apply in the present case.

This Court has heard learned counsel for the parties and has perused the paper book.

A Coordinate Bench of this Court in ***Kali Kaur's case*** (Supra), was pleased to hold as under:-

“I have considered the submissions made by counsel for the parties.

Admittedly the petitioner was not named in the FIR. As per prosecution version 400 grams of Heroin was recovered from the possession of non-applicant Rani Kaur who was travelling in a car with non-applicant Dilbagh Singh, Rajni Bala @ Rosy and Jagsir Singh on 28.11.2021. There are also allegations that aforesaid Rani Kaur made disclosure against the present petitioner and accordingly the present petitioner was nominated as an accused and 10 grams of Heroin was recovered from her possession on 16.12.2021 and since then she is in custody in the present case. The State counsel has failed to show that the present petitioner was having any acquaintance with aforesaid Rani Kaur. The State counsel has admitted that there is no call detail record to connect the petitioner with recovery of 400 grams of Heroin from the possession of Rani Kaur.

It is a moot point as to how the petitioner is liable for recovery of 400 grams of Heroin, which is stated to have been effected from conscious possession of Rani Kaur.

As per prosecution version, only 10 grams of Heroin was recovered from the conscious possession of the petitioner, which comes under non-commercial quantity and thus embargo of Section 37 NDPS Act is not applicable to the case of the petitioner.

Further the police has presented the challan after completion of investigation and charges have been framed, but it will take considerable time for the trial to conclude. As per the custody certificate furnished by the State counsel, the petitioner is already in custody for about 9 months and is recorded to be on bail in the another criminal cases which are being faced by her.

In view of the above, as it will take time for the trial to conclude, so no purpose is going to be served by keeping the accused behind the bars for any longer period.

Thus without commenting on the merits of the case, the petition is allowed and the petitioner is ordered to be released on bail subject

to her furnishing bail and surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate concerned.

14.09.2022

Sd/-(KARAMJIT SINGH)
JUDGE”

A perusal of the above order would show that in the said case, although, recovery from the non-applicant was of 400 grams of heroin, which quantity falls under commercial category, and the petitioner therein had been nominated on the basis of the disclosure statement made by the said non-applicant Rani Kaur and thereafter recovery effected from the petitioner therein was of 10 grams of heroin, which quantity falls under non-commercial category and the Coordinate Bench after considering that there were no call detail records between the petitioner therein with Rani Kaur so as to connect her with the recovery of 400 grams of heroin, had granted bail to the petitioner therein.

The Hon'ble Supreme Court of India in ***Abu Taher Mandal @ Sentu's case*** (Supra) was considering the bail application of the accused petitioner therein from whom the recovery of 61 grams of heroin had been effected and who was implicated on the basis of the statement of the principle accused Mohammad Shamim from whom recovery of 786 grams of heroin had been effected. One of the factors which was considered by the Hon'ble Supreme Court was that the recovery effected from the said petitioner was not of commercial quantity. Although, in the said case, there were other factors including the fact of long custody undergone by the petitioner therein and the Hon'ble Supreme Court after considering these aforesaid factors, was pleased to grant bail to the petitioner therein.

In the present case, the petitioner has been in custody since 07.10.2021 and the investigation is complete and the challan has already

been examined and thus, the trial is likely to take time and the petitioner is not involved in any other case. The recovery effected from co-accused Palwinder Kaur is of 260 grams of heroin but there is no material to connect the petitioner with the said recovery effected from Palwinder Kaur, other than the disclosure statement of Palwinder Kaur. The question as to whether the petitioner can be linked to the said recovery effected from Palwinder Kaur would be a moot point which would be determined during the course of trial but a perusal of the relevant record produced before this Court prima facie shows that there is nothing to link the petitioner with the said recovery effected from Palwinder Kaur. The argument of learned counsel for the petitioner in the said circumstances to the effect that at best, the petitioner can be tried for recovery of 10 grams of heroin, allegedly effected from her, cannot be outrightly rejected and the said aspect would be considered finally during the course of trial.

Keeping in view the abovesaid facts and circumstances and also the abovesaid orders passed by the Hon'ble Supreme Court and the Coordinate Bench of this Court and also keeping in view the custody undergone by the petitioner and the stage of the trial and the recovery effected in pursuance of the disclosure statement of the present petitioner, the present petition is allowed and the petitioner is ordered to be released on regular bail on her furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to her not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted

to the petitioner.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

February 13, 2023
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No